



**CITY OF AKRON, OHIO**  
**POLICE DIVISION**  
**JAMES D. NICE, CHIEF OF POLICE**

<b>NUMBER</b> P-2011-020	<b>EFFECTIVE DATE</b> September 1, 2011	<b>RESCINDS</b> P-08-020 Issued 8-1-08
<b>SUBJECT</b> Impaired Driver and Related Offenses Procedure		<b>ISSUING AUTHORITY</b> Chief James D. Nice

## **I. POLICY**

It is the goal of the Akron Police Department to reduce the number of accidents that are a result of drugs and alcohol. Any person who operates a vehicle under the influence poses a threat to the public. Therefore, officers will work to remove this type of driver from the roadway by being able to recognize signs that a driver is impaired and by being familiar with the laws that govern the arresting and testing process.

## **II. DEFINITIONS**

- A. Administrative License Suspension (ALS) – The immediate suspension of a driver's license for OVI when the offender's chemical test result is at or above the legal limit for OVI or OVUAC or when the offender refuses to submit to a chemical test for OVI or OVUAC or physical control. This suspension applies to the operation of any vehicle and out-of-state driver's licenses.
- B. Blood Alcohol Concentration (BAC) – This is a separate offense included in the OVI statute. The offender is charged with this when his alcohol concentration is at or above the legal limit established by law.
- C. BMV2255 – This is an all purpose reporting form developed by the Bureau of Motor Vehicles (BMV). It is used to report OVI, OVUAC or physical control arrests, chemical test results or refusals, ALS, pretrial seizure, forfeiture, and CDL out-of-service orders. The back of the form contains the implied consent consequences that must be shown and read to the offender. The back also contains all required notifications to the offender and the vehicle owner.
- D. Forfeiture – Vehicle ownership relinquished at sentencing for specific offenses pursuant to the court's order.
- E. Impaired Driver – A person operating a vehicle while under the influence of alcohol, drugs, or a combination, and, as a result, exhibits diminished mental and physical abilities.
- F. Implied Consent – When a person operates a vehicle he is agreeing to submit to chemical testing upon request. The right to refuse exists, but a refusal results in mandatory driver's license suspension.
- G. National Highway Transportation Safety Administration (NHTSA) – A federal organization designed to establish standards for motor vehicle highway safety.

- H. Operate – To cause or have caused movement of a vehicle on any public or private property used by the public for purposes of vehicular traffic or parking.
- I. Operate a Vehicle After Underage Consumption (OVUAC) – Any person under the age of twenty-one who has an alcohol consumption at or above the legal limit established by law.
- J. Operating a Vehicle While Under the Influence (OVI) – To operate any vehicle with chemically impaired mental and physical abilities. The driver does not need an illegal blood alcohol level to be successfully prosecuted, but must exhibit impaired abilities. The offense applies to both public and private property.
- K. Physical Control – When a person is in the driving position and has possession of the vehicle's ignition key or other ignition device and has not moved the vehicle.
- L. Pretrial Seizure – The immediate impoundment and immobilization of a vehicle for specific offenses. Seizure is executed by the officer at the time of arrest or citation and is in effect until the offender's initial court appearance.
- M. Standardized Field Sobriety Testing (SFST) – A battery of tests, Horizontal Gaze Nystagmus, Walk-and-Turn, and One-leg Stand, administered and evaluated in a standardized manner to obtain validated indicators of impairment based on NHSTA research.

### III. PROCEDURE

#### A. GENERAL INFORMATION

1. Reasonable grounds must exist to stop and make contact with the driver; i.e., a moving or equipment violation, traffic crash, suspected or actual criminal activity.
2. Officers should be aware that some medical conditions may cause a person to exhibit some characteristics of an impaired driver.
3. When possible, all drivers should be asked to perform field sobriety tests.
  - a. **Any** officer that is SFST certified **shall** administer those field tests according to NHTSA standards, which according to statute, must be within substantial compliance.
  - b. Any non-NHTSA certified officer may conduct acceptable field sobriety tests.
  - c. Field sobriety tests are voluntary and the driver has the right to refuse to participate.
4. Probable cause for arrest is established based on the totality of the evidence collected and shall be documented in the OVI confidential.
5. The offender **shall not** be asked if he will submit to any breath, blood or urine test while in the field. This request can only be made in a police station, hospital or other medical facility, and only after the offender has been shown and read the BMV2255.

#### B. ARREST PHASE

1. When an impaired driver is placed under arrest it **shall** be the arresting officer's responsibility to immediately remove from the offender's possession anything that could be consumed orally. The offender must be observed for at least twenty minutes prior to breath-testing to ensure they have not consumed any substance or placed any items in their mouth.
2. The arresting officer will notify the dispatcher of the need for a breath-testing officer to report to the Traffic Bureau, unless the offender is being transported to a medical facility.
  - a. If one of the arresting officers is a qualified breath-testing officer, that officer may conduct the testing procedure.
  - b. It is not a preferred procedure for a lone arresting officer to administer a breath test. Another police officer or police department employee **must** witness the testing procedure.
3. Child endangering<sup>1</sup> provides that an offender arrested for OVI or OVUAC and who has at least one child under the age of eighteen or a mentally handicapped person under the age of twenty-one in the vehicle at the time, shall be charged with a violation of this section. Under certain circumstances this offense could be elevated to a felony.

#### C. TESTING PHASE

1. The arresting officer shall make every effort to have the testing completed within three hours of the violation; i.e., time of the traffic stop or the time that a traffic crash occurred. The implied consent must be read within two hours.
2. Right to counsel
  - a. The testing officer is not required to advise the offender of the right to counsel prior to the completion of testing, but if such a request is made all reasonable efforts will be made to fulfill it without jeopardizing the test's three hour time requirement.
  - b. Any conversation between the offender and counsel is privileged. Keep the offender under observation, but permit as much privacy as is practical.
  - c. The offender will be secured to the bench in the Traffic Bureau. The door between the two offices will be closed. The arresting officer can see the offender but still maintain the attorney-client privilege.
3. Whenever testing is being conducted in the Traffic Bureau and the offender is suspected of being under the influence of drugs or narcotics, a urine test should be requested in conjunction with the breath test.
4. Blood or urine test – Any arresting officer can request this test.
  - a. Blood – in medical facility.

- b. Urine – in medical facility or at the station.
  - c. Offender must first be shown and read BMV2255 within two hours of violation.
    - 1) Implied consent consequences are on back of BMV2255.
    - 2) Reading must be witnessed by another officer or medical person.
    - 3) Name of reading officer, witness, time of reading, and time of consent or refusal to testing shall be included in OVI confidential.
  - d. The arresting officer shall make every effort to have the testing completed within three hours of the violation.
  - e. Collection kit will be obtained in the Traffic Bureau.
  - f. Collection of sample – follow instructions in the collection kit and strictly adhere to the chain of custody.
  - g. Unconscious persons are deemed to have given consent for chemical testing.
  - h. Refusals
    - 1) The arresting officer will determine which test or tests shall be administered. If the offender declines to perform one test, it constitutes a refusal of all tests.
    - 2) The time of refusal and the type of test refused shall be included on all appropriate forms.
    - 3) The arresting officer shall advise the offender that an ALS had been imposed on the offender's Ohio, or out-of-state, driver's license and shall be seized and attached to the BMV2255.
- D. Disposition of offender - All offenders shall be issued a traffic citation with a court date within four calendar days in accordance with the current court schedule. The offender will be released into the custody of a competent person and that person's information will be documented in the OVI confidential unless one the following apply:
- 1. The offender is being charged with an offense that would preclude being released.
  - 2. The officer is unable to contact a competent person.
    - a) The offender is not permitted to take a taxicab or other public transportation.
    - b) The offender is not permitted to walk home.
  - 3. The offender shall be taken to the hospital if the breath result is .35 or higher.
    - a) The arresting officer is responsible for arranging transportation.

- b) EMS need only be called if the offender appears to be in immediate distress.
- c) Release the offender to the hospital and medical staff.
- 4. If the offender is unable to be released to a competent person and is not being charged with an offense that requires incarceration, the offender will be issued a traffic citation and then transported to a detoxification center.

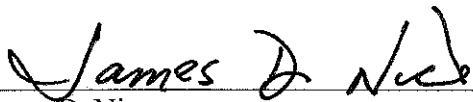
E. VEHICLE DISPOSITION

- 1. If the vehicle is subject to forfeiture, then "vehicle subject to forfeiture" must be written on the citation.
- 2. If the violator is not the registered owner of the vehicle then hold for ownership.
- 3. Refer to reference chart for sanctions.

F. For repeat offenders, pretrial seizures, and forfeitures refer to the reference chart.

G. Current legal limits, reference charts and checklists are posted in the Traffic Bureau to assist officers.

By Order Of,

  
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James D. Nice  
Chief of Police

Date August 16, 2011

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<sup>1</sup> Ohio Revised Code Section 2919.22C1

## REFERENCE CHART

OFFENSE	BMV2255	ALS	PRETRIAL SEIZURE	LICENSE TO COURT	FORFEITURE
1st OVI arrest	YES	Yes .08%+ or refusal	NO	Yes If less than .08%	NO
2nd or 3rd OVI arrest in 6 years	YES	Yes .08%+ or refusal	Yes Owner/Violator only	Yes If less than .08%	NO
4th OVI in 6 years or 6th OVI in 20 years	YES	Yes .08%+ or refusal	Yes Owner/Violator only	Yes If less than .08%	YES
1st OVUAC	YES	Refusal only	NO	Test-YES Refusal-BMV	NO
2nd OVUAC with 1 year	YES	Refusal only	NO	Test-YES Refusal-BMV	NO
1st or 2nd DUS OVI in 5 years	YES	NO	Owner/Violator only	YES	NO
3rd DUS OVI in 5 years	YES	NO	Owner/Violator only	YES	YES
1st or 2nd DUS FRA in 5 years	YES	NO	Owner/Violator only	YES	NO
3rd DUS FRA in 5 years	YES	NO	Owner/Violator only	YES	YES
1st or 2nd Wrongful Entrustment Lifetime	YES	NO	Owner/Violator only	NO	NO
3rd Wrongful Entrustment Lifetime	YES	NO	Owner/Violator only	NO	YES
Physical Control	YES	Refusal only	NO	Test-YES Refusal-BMV	NO

## **OVI Implied Consent**

You are now under arrest for – Operating a vehicle under the influence of alcohol, a drug, or a combination of them.

If you refuse to take any chemical test required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a prior conviction of OVI or OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance under state or municipal law within the preceding twenty years, you are now under arrest for state OVI, and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI.

If you take any chemical test required by law and are found to be at or over the prohibited amount of alcohol, a controlled substance, or a metabolite of a controlled substance in your whole blood, blood serum or plasma, breath, or urine as set by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated.

If you take a chemical test, you may have an independent chemical test taken at your own expense.

## **OVUAC Implied Consent**

You are now under arrest for – Operating a vehicle after underage consumption.

If you refuse to take any chemical test required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a prior conviction of OVI or OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance under state or municipal law within the preceding twenty years, you are now under arrest for state OVI, and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI.

If you take any chemical test required by law and are found to be at or over the prohibited amount of alcohol, a controlled substance, or a metabolite of a controlled substance in your whole blood, blood serum or plasma, breath, or urine as set by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated.

If you take a chemical test, you may have an independent chemical test taken at your own expense.



## **PHYSICAL CONTROL Implied Consent**

You are now under arrest for – Having physical control of a vehicle while under the influence.

If you refuse to take any chemical test required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a prior conviction of OVI or OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance under state or municipal law within the preceding twenty years, you are now under arrest for state OVI, and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI.

If you take a chemical test, you may have an independent chemical test taken at your own expense.